

1 **RESOLUTION ON THE ADMINISTRATION OF**
2 **ENVIRONMENTAL LAWS**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Bill Wright**

6 A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR
7 REQUESTING THE ENVIRONMENTAL PROTECTION AGENCY TO REFRAIN FROM
8 OVERFILING ON STATE-NEGOTIATED COMPLIANCE ACTIONS AND TO DEFER TO
9 STATE AND LOCAL PRIORITIES IN TAKING COMPLIANCE ACTION; AND
10 REQUESTING CONGRESS TO INVESTIGATE ENFORCEMENT ACTIVITIES OF THE
11 ENVIRONMENTAL PROTECTION AGENCY AND REQUIRE THE AGENCY TO DEFER
12 TO STATE ENFORCEMENT AND COMPLIANCE ACTIONS WHERE ACTIONS ACHIEVE
13 COMPLIANCE AND ARE PROTECTIVE OF HEALTH AND THE ENVIRONMENT.

14 *Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*

15 WHEREAS, protection of public health and the environment are among the highest
16 priorities of state governments;

17 WHEREAS, Congress has provided by statute for the delegation of certain federal program
18 responsibilities to the states;

19 WHEREAS, to obtain delegation of federal environmental programs, a state must
20 demonstrate that it has adopted laws, regulations, and policies as stringent as federal laws,
21 regulations, and policies;

22 WHEREAS, over the past 25 years, the states have developed and demonstrated expertise
23 in operation of federal environmental programs enabling states to obtain and maintain the
24 delegations;

25 WHEREAS, the states of Utah, Colorado, Montana, Wyoming, North Dakota, and South
26 Dakota constitute an area designated by the Environmental Protection Agency (EPA) as Region
27 VIII;

28 WHEREAS, the states in Region VIII make compliance with environmental laws, rules,
29 and permits the highest priority;

30 WHEREAS, the state of Utah has full delegation in all federal environmental programs;

31 WHEREAS, the EPA and the states have bilaterally developed over the past 25 years
32 policy agreements which reflect roles and which recognize that the primary responsibility for
33 enforcement and compliance resides with the states, with the EPA taking enforcement action
34 principally when the state requests assistance or is unwilling or unable to take timely and
35 appropriate enforcement action;

36 WHEREAS, inconsistent with these policy agreements, the EPA has conducted direct
37 federal inspections within programs delegated to states, has taken direct enforcement actions, has
38 levied fines and penalties against regulated entities in cases where the state previously took
39 appropriate action consistent with the agreements to bring the entities into compliance, and has
40 failed to notify the states in advance of their action;

41 WHEREAS, the EPA has begun to use its enforcement authority in cases where the state
42 had worked with the regulated entity to achieve compliance, and the overfiling by the EPA
43 accomplished no further protection of the public health or environment but only imposed an
44 additional penalty on the regulated entity;

45 WHEREAS, the EPA's current enforcement practices and policies and the resultant detailed
46 oversight and overfiling of state actions substantially weaken the state's ability to take compliance
47 actions and resolve environmental issues;

48 WHEREAS, the EPA's enforcement practices and policies have had an adverse impact on
49 working relationships between the EPA and states;

50 WHEREAS, the EPA's reliance on the threat of enforcement action to force compliance
51 may not result in environmental protection, but rather may result in delay and litigation, cripple
52 incentives for technological innovation, and provoke animosity between government, industry, and
53 the public; and

54 WHEREAS, the Western Governor's Association has adopted "Principles for
55 Environmental Protection in the West," which encourages collaboration not polarization, advocates
56 the replacement of command and control with economic incentives and rewarding results, and
57 encourages the weighing of costs against benefits in environmental decisions:

58 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the

59 Governor concurring therein, requests the EPA to refrain from overfiling or threatening to overfile
60 on state-negotiated compliance actions if the actions achieve compliance with applicable state and
61 federal law and are protective of health and the environment.

62 BE IT FURTHER RESOLVED that the Legislature and the Governor request that the EPA,
63 in taking enforcement and compliance actions, recognize and defer to individual state and local
64 priorities that are important for the protection of the environment.

65 BE IT FURTHER RESOLVED that the EPA should work with and assist states in
66 evaluating the overall effectiveness of state compliance programs and not focus on the detail of
67 individual actions.

68 BE IT FURTHER RESOLVED that the Legislature and the Governor request the Congress
69 of the United States to investigate EPA enforcement activities and require the EPA to defer to state
70 enforcement and compliance actions in delegated states where the actions achieve compliance and
71 are protective of health and the environment.

72 BE IT FURTHER RESOLVED that copies of this resolution be sent to the President of the
73 United States, the President of the United States Senate, the Speaker of the United States House
74 of Representatives, each member of the Utah congressional delegation, the Administrator of the
75 U.S. Environmental Protection Agency, the Assistant Administrator of the U.S. EPA Office of
76 Enforcement and Compliance, the Regional Administrator of the U.S. EPA Region VIII, the
77 National Governor's Association, the National Council of State Legislators, the Council of State
78 Governments, the Western Governor's Association, and the Environmental Council of the States.

Legislative Review Note
as of 1-22-99 10:27 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel